



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

PIEDMONT REGIONAL OFFICE
4949-A Cox Road, Glen Allen, Virginia 23060
(804) 527-5020 Fax (804) 527-5106
www.deq.virginia.gov

L. Preston Bryant, Jr.
Secretary of Natural Resources

David K. Paylor
Director

STATE WATER CONTROL BOARD AND STATE AIR POLLUTION CONTROL BOARD ENFORCEMENT ACTION SPECIAL / ORDER BY CONSENT ISSUED TO MILLER OIL CO., INC. FOR

**Air Registration 52201 and
Underground Storage Tank Facility ID Numbers 4-001506, 4-022320, and 4-001643**

SECTION A: Purpose

This is a Consent Order issued under the authority of Va. Code §10.1-1309 and §10.1-1316 and a Special Order by Consent issued under the authority of Va. Code §§ 62.1-44.15(8a) and (8d), among the State Air Pollution Control Board, the State Water Control Board, and Miller Oil Co., Inc., for the purpose of resolving certain alleged violations of the Virginia Air Pollution Control Law and Regulations for the Control and Abatement of Air Pollution and State Water Control Law and UST Regulations.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "Air Board" means the State Air Pollution Control Board, a permanent citizens' board of the commonwealth of Virginia, as described in VA. Code §§10.1-1184 and -1301.
2. "AQP-9" means the Procedures for Implementation of Regulations Covering Stage II Vapor Recovery Systems for Gasoline Dispensing Facilities (January 1, 1993), as referenced in 9 VAC 5-20-121.B.6.
3. "Boards" means the State Air Pollution Control Board and the State Water Control Board, two permanent bodies of the Commonwealth of Virginia as described in Va. Code §§ 10.1-1301, 62.1-44.7, and 10.1-1184.

4. "Director" means the Director of the Department of Environmental Quality.
5. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia as described in Va. Code § 10.1-1183.
6. "Facilities" means MM67, MM71, MM76 and MM61, collectively.
7. "Miller" means Miller Oil Co., Inc., a corporation certified to do business in Virginia and its affiliates, partners, subsidiaries, and parents.
8. "MM61" means the Miller Mart 61 store, located at 5615 Boydton Plank Road, in Petersburg, Virginia, UST Facility Identification No. 4-022320.
9. "MM67" means the Miller Mart 67 store located at 11301 Nuckols Road in Henrico County, Virginia, Air Registration No. 52201.
10. "MM71" means the Miller Mart 71 store, located at 2910 Turner Road in Chesterfield County, Virginia, UST Facility Identification No. 4-001643.
11. "MM76" means the Miller Mart J and K Convenience Store, located at 11461 Robious Road, in Chesterfield County, Virginia, UST Facility Identification No. 4-001506.
12. "Order" means this document, also known as a "Special Order By Consent", a "Consent Special Order", or a "Consent Order".
13. "PRO" means the Piedmont Regional Office of DEQ, located in Glen Allen, Virginia.
14. "Stage I system" means the Stage I vapor recovery system at a gasoline dispensing facility.
15. "Stage II system" means the Stage II vapor recovery system at a gasoline dispensing facility.
16. "State Water Control Law" means Va. Code § 62.1-44 *et seq.*
17. "UST" means underground storage tank, as defined in 9 VAC 25-580-10 and Va. Code §62.1-44.34:8.
18. "UST Regulations" means the Underground Storage Tanks: Technical Standards and Corrective Action Requirements Regulation, found at 9 VAC 25-580-10 *et seq.*
19. "VAC" means the Virginia Administrative Code.

20. "Va. Code" means the Code of Virginia (1950), as amended.
21. "Virginia Air Pollution Control Law" means Chapter 13 (§ 10.1-1300 et. seq.) of Title 10.1 of the Va. Code.
22. "VOC[s]" mean volatile organic compound(s).
23. "Water Board" means the State Water Control Board, a permanent citizens' board of the Commonwealth of Virginia, as described in Va. Code §§10.1-1184 and 62.1-44.7.

SECTION C: Findings of Fact and Conclusions of Law

1. Miller owns and operates the Facilities. Miller is an "Owner" as that term is defined in Va. Code §§ 10.1-1300 and 62.1-44.34:8, 9 VAC 5-40-5210, and 9 VAC 25-580-10.
2. Gasoline is dispensed from tank trucks into USTs located at the Facilities and from USTs into motor vehicles. The Facilities are existing stationary sources and are therefore subject to 9 VAC 5-40-5200 (Emission Standards for Petroleum Liquid Storage and Transfer Operations).
3. The USTs located at the Facilities contain gasoline, which is a petroleum product. Petroleum is a "Regulated Substance", as that term is defined in Va. Code §62.1-44.34:8, and 9 VAC 25-580-10. The USTs at all of the Facilities are therefore subject to the UST Regulations.
4. DEQ staff inspected the Facilities for compliance with the UST Regulations and the Emission Standards for Petroleum Liquid Storage and Transfer Operations on various dates during 2007 and 2008. The following represents the Boards' findings of fact and conclusions of law with respect to those inspections.

Miller Mart No. 67

5. On August 8, 2007, DEQ PRO staff conducted an inspection of MM67. The following violations were observed:
 - (a) The Stage I system was a coaxial system, which is not certified in Virginia as able to remove, destroy or prevent the discharge of at least 90% by weight of VOC emissions as required by 9 VAC 5-40-5220(E)(1).
 - (b) The Stage II system was placed in service in September 2002 without previously registering, testing, or certifying the system as required by 9 VAC 5-40-5220(F)(1) and (F)(6)(a-d).

(c) Records of operator training and maintenance, repair and testing of the Stage II system were not on site, as required by 9 VAC 5-40-5220(F)(6)(j).

6. Miller failed to correct the violations above, which were identified in a Request for Corrective Action ("RCA") issued during the inspection. On September 17, 2007, the Department issued a Warning Letter ("WL"), again citing the violations described above. The Department resent the WL on October 30, 2007, after Miller indicated the original was not received. After receiving the WL on October 31, 2007, Miller failed to correct the violations.
7. On June 12, 2008, the Department issued Notice of Violation ("NOV") Number 07-07-PRO-403 to Miller, citing the violations described above.
8. On June 24, 2008, a meeting was held between DEQ staff and representatives of Miller to discuss the NOV. Department staff explained what was required by Miller in order to achieve compliance.
9. On September 22, 2008, the DEQ staff conducted a follow-up inspection of MM67. The Stage I system had been modified and was acceptably configured in accordance with 9 VAC 5-40-5220(E)(1). The system passed the air to liquid ratio and blockage testing performed by Miller representatives, but pressure decay testing was not acceptable because it was not performed in accordance with AQP-9. Maintenance log records, daily inspection logs and monthly inspection certification records, and a valid training certificate were available for review, as required by 9 VAC 5-40-5220(F)(6)(j), but the facility registration form was out of date.
10. Miller representatives performed follow-up pressure decay testing on October 21, 2008 following AQP-9. The vapor recovery system passed the pressure decay testing.
11. On April 14, 2009, DEQ received a new Facility Registration and Compliance Form from Miller for the Stage II equipment, however the form was incomplete.

Miller Mart No. 71

12. On March 21, 2008, DEQ staff conducted an inspection of the USTs at MM71. The following violations were noted during the inspection :
 - (a) Records of compliance with the release detection requirements found in 9 VAC 25-580-140 were not available on site, as required by 9 VAC 25-580-180; and
 - (b) The spill prevention buckets were filled with liquid and debris, and did not provide protection from the release of product to the environment, as required by 9 VAC 25-580-50 (3)(a)(1).
13. Miller failed to respond to an RCA issued during the inspection and a Warning Letter issued on June 4, 2008.

14. NOV Number 08-12-PRO-579 was issued to Miller on December 3, 2008, and DEQ staff contacted Miller representatives on January 20, 2009.
15. On January 29, 2009, Miller Oil submitted the records of release detection and an invoice indicating that the spill prevention buckets were cleaned.

Miller Mart No. 76

16. On August 21, 2008, DEQ staff conducted an inspection of the USTs at MM76. The following violations were noted during the inspection:
 - (a) The current ownership, status of the UST system, and method of release detection for the UST system were not reflected in the most recent 7530 Notification Form submitted to DEQ. Owners or operators of UST systems are required by 9 VAC 25-580-70 to submit an amended 7530 Notification Form within 30 days of any change in ownership, tank status, or release detection methods.
 - (b) Records of compliance with the release detection requirements found in 9 VAC 25-580-140 were not available on site, as required by 9 VAC 25-580-180.
 - (c) Excessive dirt was observed around the submersible turbine pumps and some of the steel flex connect portions of the piping appeared to be in contact with the ground with no form of corrosion protection, which is required by 9 VAC 25-580-60(3).
17. Miller failed to respond to an October 18, 2008, and a written reminder sent to Miller Oil on January 30, 2009.
18. On February 20, 2009, DEQ issued NOV No. 09-01-PRO-597 to Miller for the violations described in Paragraph 14 above.

Miller Mart No. 61

19. On October 9, 2008, DEQ staff conducted an inspection of the USTs at MM61. The following violations were noted during the inspection:
 - (a) The spill prevention buckets were filled with liquid and debris, and did not provide protection from the release of product to the environment, as required by 9 VAC 25-580-50 (3)(a)1; and
 - (b) The automatic tank gauge for the USTs at the facility was not operating properly. The automatic tank gauge is Miller's method of release detection at this facility, and must be in working order, according to 9 VAC 25-590-130(A)(2).
20. Miller Oil failed to respond to an RCA issued during the October 2008 inspection or a January 8, 2009 Warning Letter.
21. On March 31, 2009, DEQ issued NOV No. 09-03-PRO-589 to Miller for the violations described in Paragraph 17, above.

22. On April 14, 2009, Miller submitted documentation that the spill prevention buckets had been cleaned out and that the automatic tank gauge had been repaired in January 2009.

23. On May 15, 2009, DEQ received evidence that MM61 was sold in March 2009.

SECTION D: Agreement and Order

1. Accordingly, the Air Board and Water Board, by virtue of the authority granted in Va. Code §§10.1-1309 and 10.1-1316, and Va. Code §§62.1-44.15(8a) and (8d), respectively, order Miller, and Miller voluntarily agrees, to perform the actions described in Appendix A of this Order. In addition, the Boards order Miller, and Miller voluntarily agrees, to pay a civil charge of \$35,467 within 30 days of the effective date of the Order in settlement of the violations cited in this Order. Payment shall be made by check payable to the "Treasurer of Virginia", delivered to:

Receipts Control
Department of Environmental Quality
Post Office Box 1104
Richmond, Virginia 23218

Payment shall include the Federal Tax Identification Number for Miller and shall include a notation that payment is being made as a requirement of this Order.

SECTION E: Administrative Provisions

1. The Boards may modify, rewrite, or amend the Order with the consent of Miller, for good cause shown by Miller, or on their own motion after notice and opportunity to be heard.
2. This Order only addresses and resolves the violations specifically identified herein, including those matters addressed in the Notices of Violation issued to Miller by DEQ on June 12, 2008, December 3, 2008, February 20, 2009 and March 31, 2009. This Order shall not preclude the Boards or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of any of the Facilities as may be authorized by law; or (3) taking subsequent action to enforce the Order. This Order shall not preclude appropriate enforcement actions by other federal, state, or local regulatory authorities for matters not addressed herein.
3. For purposes of this Order and subsequent actions with respect to this Order only, Miller admits to the jurisdictional allegations, and agrees not to contest, but neither admits nor denies, the findings of fact and conclusions of law in this Order.

4. Miller consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. Miller declares it has received fair and due process under the Administrative Process Act, Va. Code §§ 2.2-4000 *et seq.*, the State Air Pollution Control Law, and the State Water Control Law, and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Boards to enforce this Order.
6. Failure by Miller to comply with any of the terms of this Order shall constitute a violation of an order of the Boards. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Boards or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. Miller shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other occurrence. Miller shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Miller shall notify the DEQ Regional Director in writing when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:
 - a. the reasons for the delay or noncompliance;
 - b. the projected duration of any such delay or noncompliance;
 - c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
 - d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director within 24 hours of learning of any condition above, which Miller intends to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto, their successors in interest, designees and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and Miller. Notwithstanding the foregoing, Miller agrees to be bound by any compliance date which precedes the effective date of this Order.
11. This Order shall continue in effect until the Director or Boards terminate the Order in his or their sole discretion upon 30 days written notice to Miller. Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Miller from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.
12. By its signature below, Miller voluntarily agrees to the issuance of this Order.

And it is so ORDERED this _____ day of _____.

Richard F. Weeks, Regional Director
Department of Environmental Quality

Miller Oil Co., Inc. voluntarily agrees to the issuance of this Order.

By: _____

Date: _____

Commonwealth of Virginia

City/County of _____

The foregoing document was signed and acknowledged before me this _____ day of

June

, 2009, by

Jessie B. Miller

(name)

President

(title)

of Miller Oil Co., Inc., on behalf of the Corporation

Notary Public

#371006

My commission expires: _____
My Commission Expires
May 31, 2010

APPENDIX A

1. Documents to be submitted to DEQ, other than the civil charge payment described in Section D of the Order, shall be sent to:

Allison Dunaway
Enforcement Manager
Department of Environmental Quality
Piedmont Regional Office
4949-A Cox Road
Glen Allen, Virginia 23060

MM67

2. **No later than July 31, 2009**, Miller shall submit a complete Facility Registration and Compliance Form to the Department that represents the current status of the Stage II system at MM67.

MM76

3. **No later than July 31, 2009**, Miller shall submit the following to DEQ:
 - (a) Records of compliance with the release detection requirements for the USTs located at MM76; and
 - (b) Documentation indicating that the submersible turbine pumps and surrounding areas at MM76 have been cleaned and that the steel flex connect portions of piping are no longer in contact with the ground or that corrosion protection has been installed.